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Viewing cable 05SANJOSE2717, COSTS OF NOT HAVING AN ARTICLE 98 AGREEMENT ARE

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Understanding cables

Every cable message consists of three parts:

- The top box shows each cable's unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

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If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#05SANJOSE2717**.

Reference ID	Created	Released	Classification	Origin
05SANJOSE2717	2005-11-23 22:18	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-14/Investigacion/NotasDestacadas/Investigacion2711020.aspx>
<http://www.nacion.com/2011-03-14/Investigacion/NotasSecundarias/Investigacion2711111.aspx>
<http://www.nacion.com/2011-03-14/Investigacion/NotasSecundarias/Investigacion2711040.aspx>
<http://www.nacion.com/2011-03-14/Investigacion/NotasSecundarias/Investigacion2711039.aspx>
<http://www.nacion.com/2011-03-14/Investigacion/NotasSecundarias/Investigacion2712229.aspx>

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 SAN JOSE 002717

SIPDIS

E.O. 12958: DECL: 11/23/2015

TAGS: [PREL](#) [MASS](#) [ETRD](#) [EAID](#) [CS](#) [KICC](#)

SUBJECT: COSTS OF NOT HAVING AN ARTICLE 98 AGREEMENT ARE MOUNTING

REF: A. SAN JOSE 2106

- [1](#)B. SAN JOSE 234
- [1](#)C. 04 SAN JOSE 2233
- [1](#)D. 04 SAN JOSE 443
- [1](#)E. 03 SAN JOSE 1773

Classified By: Ambassador Langdale for reasons 1.4 (b) and (d)

Summary

[1](#)1. (C) The GOCR, though not philosophically opposed to providing the United States with the protections contained in an Article 98 agreement, faces serious political and constitutional impediments, which have for the last two and a half years prevented an agreement from being concluded. Meanwhile, because of the American Servicemembers' Protection Act (ASPA) and the Nethercutt Amendment to U.S. appropriations bills, Costa Rica is paying a growing price for not signing an Article 98 agreement. Beginning in FY 04 U.S. military assistance has been cut off, and beginning in FY 05 Costa Rica lost its eligibility for Economic Support Funds (ESF). This has adversely affected U.S.-Costa Rican cooperation in the areas of counternarcotics, counterterrorism, and, to a lesser extent, free trade. End summary.

Political/Constitutional Dilemma

12. (C) President Pacheco is not opposed to an Article 98 agreement per se, but he and his foreign minister, Roberto Tovar, recognize that such an agreement would not be ratified by the Legislative Assembly. This is because of widespread support for the International Criminal Court (ICC), one of whose magistrates is Costa Rican, and the belief that an Article 98 agreement somehow undermines the ICC and weakens Costa Rica's commitment to multilateralism and international law. Consequently, the GOCR's position for the last two and a half years has been that it would consider only an Article 98 agreement that would not have to be submitted to the Legislative Assembly for approval.

13. (C) The Costa Rican constitution requires that international agreements negotiated by the executive branch be approved by the Assembly before they can be deemed valid. There is an exception, however, for lesser-rank "protocols" derived from an existing international agreement and expressly authorized by that agreement. Such a protocol can be promulgated by the executive without legislative approval. The trick is to identify an existing international agreement that can serve as a legal foundation for the scope of protections contained in an Article 98 agreement. We must not only persuade President Pacheco, but ultimately the Constitutional Chamber of the Supreme Court. (Comment: The Court has a history of striking down the exercise of executive power. In September 2004, for example, the Court ruled that the executive had overstepped its authority and violated Costa Rica's tradition of neutrality by giving political support to U.S. and allied military action in Iraq. See 04 San Jose 2401.)

New Ferment Over Article 98

14. (U) The Costa Rican press reported November 20 and 21 that the U.S. Congress had passed an FY 06 appropriations bill that prohibits the provision of Economic Support Funds (ESF) to countries that are parties to the ICC and have not entered into an Article 98 agreement with the United States. Foreign Minister Tovar was interviewed in the leading newspaper and complained that the U.S. legislation is unfair and that Costa Rica should be among the exempted countries, as a good and reliable friend of the United States. He also left a small opening for negotiations by adding, "We have already said (to the USG) that we can analyze the possibility of supporting some other agreement (other than the standard model Article 98 agreement) inasmuch as it does not contradict Costa Rican principles."

15. (C) Ambassador followed up by phoning Tovar the morning of November 21 and asking him, in light of his comment to the press and his earlier suggestion to Ambassador to do "something" about Article 98, whether the time might be right for renewed discussions. Tovar replied that at the moment he is completely consumed with preparing a brief for Costa Rica's border dispute case against Nicaragua in the International Court of Justice (ICJ). After that, he will think about how to craft an Article 98 solution and committed to get back with Ambassador on this issue after the holidays.

U.S. Military Assistance Comes To An End

16. (SBU) Although Costa Rica abolished its military in 1949, it has police, a Coast Guard, and an Air Section that carry out paramilitary functions. Engagement with the U.S. Armed Forces increased dramatically with the signing of the Bilateral Maritime Agreement for Counternarcotics Cooperation of 1998. The relationship is managed by the military group at the Embassy, headed by a Coast Guard Commander. His main counterparts in the GOCR are the Minister of Public Security and the Director of the Costa Rican Coast Guard, who reports to that minister. Cooperation is in the areas of the fight against drug trafficking and the fight against terrorism.

17. (SBU) Between 2000 and 2002, the United States supplied most of the boats now used by the Costa Rican Coast Guard, including three 82-foot patrol boats (furnished as Excess Defense Articles-EDA) and six 24-foot rigid-hull inflatable boats (purchased with State Department International Narcotics and Law Enforcement (INL) funds). In addition, using funds from DOD's Foreign Military Sales (FMS) program, Costa Rica has been able to purchase many small but essential items used in law enforcement, such as vehicles, radios, uniforms, flashlights, night-vision goggles, etc.

18. (SBU) The bread and butter of U.S. cooperation, however, has been training, mostly funded with International Military Education and Training (IMET) funds, on the order of about USD 400,000 a year. State Department INL funds added as much as USD 200,000 for training. The Costa Rican Coast Guard was the main beneficiary, receiving a variety of courses for professional development. IMET-funded training was also provided to intelligence officers, the Special Intervention Unit (SWAT team), and mechanics and pilots in the Air Section.

19. (SBU) Costa Rican eligibility for IMET, EDA, and FMS ended with the entry into force of the American Servicemembers' Protection Act (ASPA) because Costa Rica is a party to the ICC and has not signed an Article 98 agreement. As of FY 04, Costa Rica has not received any U.S. military assistance. Coincidentally, INL funds have diminished significantly for Costa Rica, and a U.S. maritime engineer resident in Costa Rica and financed by INL has moved to Panama.

Ineligibility for Economic Support Funds

10. (SBU) Costa Rica's failure to sign an Article 98 agreement has also resulted in ineligibility for ESF starting in FY 05. As a result, Costa Rica was the only signatory country to the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) that could not receive a portion of the FY 05 USD 20 million in ESF in trade capacity building funds for labor and environmental programs. The funds are being used to modernize labor justice systems, strengthen labor ministry inspection systems, and improve enforcement of laws against sex discrimination. Significant amounts of ESF for trade capacity building in CAFTA-DR countries could be appropriated in the future, but Costa Rica would remain ineligible.

Comment

11. (C) The GOCR is keenly aware of the costs of not signing an Article 98 agreement. The worst affected are the Ministry of Public Security and supporters of an expanded trade relationship with the United States. Although the value of U.S. military assistance in monetary terms may not seem to be much, it is vital for the maintenance of Costa Rica's counternarcotics and counterterrorism capabilities. The lack of funds in the last two fiscal years has resulted in noticeable deterioration of the seaworthiness of the Costa Rican Coast Guard fleet and degradation of the operational readiness of other law enforcement units such as the SWAT team. More worrisome, the absence of training and other U.S. military assistance may eventually cause Costa Ricans to call into question the value to them of the Bilateral Maritime Agreement.

12. (C) A key preoccupation of Foreign Minister Tovar and Costa Rican Ambassador to the United States Tomas Duenas is that Costa Rica is being cut off from ESF needed to implement CAFTA-DR. Tovar moreover feels that Costa Rica is being unfairly discriminated against. Tovar and Duenas both believe that if it becomes generally known that Costa Rica is not eligible for assistance being received by all other CAFTA-DR countries, it will hurt prospects for ratification of CAFTA-DR in Costa Rica.

13. (C) The unavailability of U.S. military assistance and ESF unavoidably contributes to a decline in U.S. influence in Costa Rica and makes it more difficult to achieve our objectives in the areas of counternarcotics, counterterrorism, and, to a lesser extent, free trade. Our task is to find a way out of the dilemma faced by the GOCR because it is in reality also a dilemma for the United States as we strive to stem the flow of illegal drugs, stop terrorists, and foster an ever-growing trade relationship with Costa Rica.

LANGDALE